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dba BUTLER'S UNIFORMS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMERICANS WITH DISABILITIES
ADVOCATES, a Nevada Nonprofit
Corporation, RICHARD WHITEHURST
and GEORGE S. LOUIE

Plaintiffs,

vs.

DICK BRUHN, INC. dba BUTLER'S
UNIFORMS, 345 9th STREET, SAN
FRANCISCO, CA

Defendants.

Case No. C031980 WHA ADR

**ANSWER TO COMPLAINT
FOR VIOLATION OF CIVIL RIGHTS
AND DISCRIMINATION AGAINST
PERSONS WITH DISABILITIES.**

JURY TRIAL DEMANDED

Defendant DICK BRUHN, INC. dba BUTLER'S UNIFORMS ("defendant") answers the complaint ("Complaint") of plaintiffs AMERICANS WITH DISABILITIES ADVOCATES, a Nevada Nonprofit Corporation, RICHARD WHITEHURST AND GEORGE S. LOUIE (collectively "plaintiffs"), as follows:

1. In answer to Paragraph 1 of the Complaint, defendant denies each and every allegation contained in lines 5 through 11 on page 3 of the Complaint. As to the other allegations of Paragraph 1, defendant is without sufficient knowledge or information to form a belief as to the

1 truth of the allegations contained in said paragraph, and on that basis denies each and every
2 allegation contained therein, except for conclusions of law, which require no response.

3 2. In answer to the unnumbered paragraph titled "Jurisdiction" of the Complaint,
4 defendant admits that plaintiffs' cause of action arose in this district. Except as specifically
5 admitted, defendant denies each and every other allegation contained therein, except for
6 conclusions of law, which require no response.

7 3. In answer to Paragraph 3 of the Complaint, defendant admits the allegation
8 contained therein.

9 4. In answer to Paragraph 4 of the Complaint, defendant is without sufficient
10 knowledge or information to form a belief as to the truth of the allegations contained in said
11 paragraph, and on that basis denies each and every allegation contained therein.

12 5 In answer to Paragraph 5 of the Complaint, defendant denies each and every
13 allegation contained therein.

14 6. In answer to Paragraph 6 of the Complaint, defendant admits the allegation
15 contained therein.

16 7. In answer to Paragraph 7 of the Complaint, defendant denies each and every
17 allegation contained therein.

18 8. In answer to Paragraph 8 of the Complaint, defendant is without sufficient
19 knowledge or information to form a belief as to the truth of the allegations contained in said
20 paragraph, and on that basis denies each and every allegation contained therein.

21 9. In answer to Paragraph 9 of the Complaint, defendant is without sufficient
22 knowledge or information to form a belief as to the truth of the allegations contained in said
23 paragraph, and on that basis denies each and every allegation contained therein.

24 10. In answer to Paragraph 10 of the Complaint, defendant is without sufficient
25 knowledge or information to form a belief as to the truth of the allegations contained in said
26 paragraph, and on that basis denies each and every allegation contained therein.

1 11. In answer to Paragraph 11 of the Complaint, defendant denies each and every
2 allegation contained therein, except for the conclusions of law, which require no response.

3 12. In answer to Paragraph 12 of the Complaint, defendant denies each and every
4 allegation contained therein.

5 13. In answer to Paragraph 13 of the Complaint, defendant denies each and every
6 allegation contained therein.

7 14. In answer to Paragraph 14 of the Complaint, defendant denies each and every
8 allegation contained therein.

9 15. In answer to Paragraph 15 of the Complaint, defendant denies each and every
10 allegation contained therein.

11 16. In answer to Paragraph 16 of the Complaint, said paragraph is a conclusion of law
12 requiring no response.

13 17. In answer to Paragraph 17 of the Complaint, said paragraph is a conclusion of law
14 conclusions of law requiring no response.

15 18. In answer to Paragraph 18 of the Complaint, said paragraph is a conclusion of law
16 requiring no response.

17 19. In answer to Paragraph 19 of the Complaint, defendant denies each and every
18 allegation contained therein except as specifically admitted in the preceding paragraphs.

19 20. In answer to Paragraph 20 of the Complaint, defendant denies each and every
20 allegation contained therein.

21 21. In answer to Paragraph 21 of the Complaint, said paragraph contains conclusions of
22 law requiring no response.

23 22. In answer to Paragraph 22 of the Complaint, defendant denies each and every
24 allegation contained therein.

25 23. In answer to Paragraph 23 of the Complaint, defendant denies each and every
26 allegation contained therein.

1 24. In answer to Paragraph 24 of the Complaint, defendant denies each and every
2 allegation contained therein.

3 25. In answer to Paragraph 25 of the Complaint, defendant denies each and every
4 allegation contained therein.

5 26. In answer to Paragraph 19 of the Complaint, defendant denies each and every
6 allegation contained therein except as specifically admitted in the preceding paragraphs.

7 27. In answer to Paragraph 27 of the Complaint, said paragraph contains conclusions of
8 law requiring no response.

9 28. In answer to Paragraph 28 of the Complaint, defendant denies each and every
10 allegation contained therein.

11 29. In answer to Paragraph 29 of the Complaint, defendant denies each and every
12 allegation contained therein.

13 30. In answer to Paragraph 30 of the Complaint, defendant denies each and every
14 allegation contained therein.

15 31. In answer to Paragraph 31 of the Complaint, defendant denies each and every
16 allegation contained therein except as specifically admitted in the preceding paragraphs.

17 32. In answer to Paragraph 32 of the Complaint, defendant denies each and every
18 allegation contained therein.

19 33. In answer to Paragraph 33 of the Complaint, defendant denies each and every
20 allegation contained therein.

21 34. In answer to Paragraph 34 of the Complaint, defendant denies each and every
22 allegation contained therein.

23 35. In answer to Paragraph 35 of the Complaint, defendant denies each and every
24 allegation contained therein.

25 36. In answer to Paragraph 36 of the Complaint, defendant denies each and every
26 allegation contained therein except as specifically admitted in the preceding paragraphs.

1 37. In answer to Paragraph 37 of the Complaint, defendant denies each and every
2 allegation contained therein, except for the conclusions of law, which require no response.

3 38. In answer to Paragraph 38 of the Complaint, defendant denies each and every
4 allegation contained therein.

5 39. In answer to Paragraph 39 of the Complaint, defendant denies each and every
6 allegation contained therein.

7 40. In answer to Paragraph 40 of the Complaint, defendant denies each and every
8 allegation contained therein except as specifically admitted in the preceding paragraphs.

9 41. In answer to Paragraph 41 of the Complaint, defendant denies each and every
10 allegation contained therein.

11 42. In answer to Paragraph 42 of the Complaint, defendant denies each and every
12 allegation contained therein.

13 43. In answer to Paragraph 43 of the Complaint, defendant denies each and every
14 allegation contained therein.

15 44. In answer to Paragraph 44 of the Complaint, defendant denies each and every
16 allegation contained therein.

17 45. In answer to Paragraph 45 of the Complaint, defendant denies each and every
18 allegation contained therein except as specifically admitted in the preceding paragraphs.

19 46. In answer to Paragraph 46 of the Complaint, said paragraph is a conclusion of law
20 requiring no response.

21 47. In answer to Paragraph 47 of the Complaint, defendant denies each and every
22 allegation contained therein.

23 48. In answer to Paragraph 48 of the Complaint, defendant denies each and every
24 allegation contained therein.

25 49. In answer to Paragraph 49 of the Complaint, said paragraph contains conclusions of
26 law requiring no response.

50. In answer to Paragraph 50 of the Complaint, defendant denies each and every allegation contained therein.

51. In answer to Paragraph 51 of the Complaint, defendant denies each and every allegation contained therein.

52. In answer to Paragraph 52 of the Complaint, defendant denies each and every allegation contained therein except as specifically admitted in the preceding paragraphs.

53. In answer to Paragraph 53 of the Complaint, defendant denies each and every allegation contained therein except that defendant admits that defendant denies that the SUBJECT FACILITY fails to comply with applicable laws prohibiting discrimination against persons with disabilities.

54. In answer to Paragraph 54 of the Complaint, defendant denies each and every allegation contained therein.

55. In answer to Paragraph 55 of the Complaint, defendant denies each and every allegation contained therein except as specifically admitted in the preceding paragraphs.

56. In answer to Paragraph 56 of the Complaint, said paragraph contains conclusions of law requiring no response.

57. In answer to Paragraph 57 of the Complaint, said paragraph contains conclusions of law requiring no response.

58. In answer to Paragraph 58 of the Complaint, defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE **(Statute of Limitations)**

The Complaint, and each and every cause of action alleged therein, is barred by the statute of limitations.

SECOND AFFIRMATIVE DEFENSE **(Lack of Standing)**

The Complaint, and each and every cause of action alleged therein, is barred on the grounds that plaintiffs lack standing.

THIRD AFFIRMATIVE DEFENSE
(Compliance with Applicable Laws)

The Complaint, and each and every cause of action alleged therein, is barred because defendant is in full compliance with federal, state and local laws regarding providing access to individuals with disabilities.

FOURTH AFFIRMATIVE DEFENSE
(No Unfair Business Practices)

The Complaint, and each and every cause of action alleged therein, is barred because defendant engaged in no unfair business practice, because it did not violate any law or regulation, did not offend any established public policy, or engage in any practice that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

FIFTH AFFIRMATIVE DEFENSE
(Equitable Defenses)

The Complaint, and each and every cause of action alleged therein, is barred by the equitable doctrines of unclean hands, waiver, estoppel and/or laches.

SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

The Complaint, and each and every cause of action alleged therein, is barred because plaintiffs failed to mitigate damages, if any, and the damages alleged in the Complaint resulted, in whole or in part, from the failure of plaintiffs and members of the general public to mitigate any damages.

SEVENTH AFFIRMATIVE DEFENSE
(Plaintiffs' Conduct)

The Complaint, and each and every cause of action alleged therein, is barred because plaintiffs' damages, if any, were caused by plaintiff's own intentional, reckless or negligent acts, omissions and/or misconduct.

EIGHTH AFFIRMATIVE DEFENSE
(Contributory Negligence)

The Complaint, and each and every cause of action alleged therein, is barred because plaintiffs were negligent in and about the matters and activities alleged in the complaint; that said negligence contributed to and was a proximate cause of the plaintiffs' alleged injuries and damages, if any, or were the sole cause thereof; and that if the plaintiffs are entitled to recover

1 damages against defendant, then defendant prays that the recovery be diminished or extinguished
2 by reason of the negligence of the plaintiffs in proportion to the degree of fault attributable to the
3 plaintiffs.

4 **NINTH AFFIRMATIVE DEFENSE**
5 **(Assumption of Risk)**

6 The Complaint, and each and every cause of action alleged therein, is barred because any
7 damages sustained by plaintiffs were incurred only after plaintiffs voluntarily and with full
8 knowledge assumed the risk of such damages.

9 **TENTH AFFIRMATIVE DEFENSE**
10 **(Lack of Damage)**

11 The Complaint, and each and every cause of action alleged therein, is barred because any
12 actions defendant took did not cause any damage or injury to plaintiff or the general public.

13 **ELEVENTH AFFIRMATIVE DEFENSE**
14 **(Lack of Supplemental Jurisdiction Over State Law Claims)**

15 Pursuant to 28 U.S.C. section 1367(a), this Court lacks jurisdiction over Plaintiffs' state
16 law claims because they are unrelated to the claims in the action within this Court's original
17 jurisdiction and do not form part of the same case or controversy under Article III of the United
18 States Constitution. Furthermore, this Court should decline to exercise supplemental jurisdiction
19 over Plaintiffs' state law claims because those claims substantially predominate over the claim or
20 claims over which the Court has original jurisdiction, or there exist other compelling reasons for
21 declining jurisdiction. In the event that the Court dismisses all claims over which it has original
22 jurisdiction, the Court should dismiss the remaining state law claims.

23 **TWELFTH AFFIRMATIVE DEFENSE**
24 **(Absence of a Justiciable Controversy)**

25 The Complaint fails to state a justiciable case or controversy under Article III, Section 2
26 of the United States Constitution or the Declaratory Judgment Act, 28 U.S.C. sections 2201 and
27 2202.
28

THIRTEENTH AFFIRMATIVE DEFENSE
(Frivolous Action)

The Complaint, and each and every cause of action alleged therein, is barred because plaintiff's maintenance of this action is frivolous, vexatious and unreasonable, thereby entitling the answering defendants to an award of attorneys' fees.

PRAYER FOR RELIEF

Wherefore, defendant prays for judgment against plaintiff as follows:

1. That plaintiffs take nothing by way of this Complaint;
2. For costs of suit herein;
3. For attorneys' fees; and
4. For such other relief as the Court may deem proper and just.

Dated: June 6, 2003

Respectfully submitted,

MOSCONE, EMBLIDGE & QUADRA, LLP

By: /s/
G. Scott Emblidge

Attorneys for Dick Bruhn, Inc.
dba Butler's Uniforms

CERTIFICATE OF SERVICE

I certify that a true and correct copy of Defendant Dick Bruhn Inc.'s Answer To Complaint was delivered to all counsel of record via electronic service pursuant to Local Rule 5-4 and General Order 45 of the United States District Court for the Northern District of California and Rules 77 and 5(b)(2)(D) of the Federal Rules of Civil Procedure by efileing, on June 6, 2003, the attached document.

Dated: June 6, 2003

/ s / Norma Butler

Norma Butler